

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FORREST STOBBE,

Plaintiff,

v.

GILL, et al.,

Defendants.

Case No. 1:20-cv-00656-HBK (PC)

ORDER DIRECTING CLERK TO ASSIGN  
ACTION TO DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION FOR A FAILURE TO  
PROSECUTE<sup>1</sup>

14-DAY DEADLINE

Plaintiff Forrest Stobbe is a state prisoner proceeding pro se in this civil rights action. For the reasons set forth below, the undersigned recommends the District Court dismiss this action without prejudice for Plaintiff's failure to comply with two court orders and prosecute this action.

**BACKGROUND**

On March 22, 2023, the Court issued an order to show cause to Plaintiff. (Doc. No. 10). The Court issued the show cause order because Plaintiff did not respond to the Court's February 3, 2023 screening order. The March 22, 2023 show cause order directed Plaintiff, within ten (10) days, to either comply with the Court's previous February 3, 2023 screening order or show cause

<sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

1 why the undersigned should not recommend that the case be dismissed without prejudice for  
 2 Plaintiff's failure to prosecute this action. (*Id.* at 2). The March 22, 2023 show cause order  
 3 advised Plaintiff that under Fed. R. Civ. P. 41 (b) and Local Rule 110, the Court could  
 4 involuntarily dismiss an action if a litigant fails to prosecute an action or comply with a court  
 5 order. (*Id.*). As of the date of these Findings and Recommendations, Plaintiff has not responded  
 6 to either the March 22, 2023 show cause order or the February 3, 2022 screening order.<sup>2</sup>

## 7 **APPLICABLE LAW AND ANALYSIS**

### 8 **A. Legal Standard**

9 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action  
 10 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court  
 11 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889  
 12 (9th Cir. 2019) (citations omitted). Similarly, the Local Rules, corresponding with Federal Rule  
 13 of Civil Procedure 11, provide, "[f]ailure of counsel or of a party to comply with . . . any order of  
 14 the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the  
 15 inherent power of the Court." E.D. Cal. L.R. 110. "District courts have inherent power to control  
 16 their dockets" and, in exercising that power, may impose sanctions, including dismissal of an  
 17 action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A  
 18 court may dismiss an action based on a party's failure to prosecute an action, obey a court order,  
 19 or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)  
 20 (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal*  
 21 *Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order);  
 22 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and  
 23 to comply with local rules).

24 In determining whether to dismiss an action, the Court must consider several factors:  
 25 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its  
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27 <sup>2</sup> The undersigned notes that, as of the date of these Findings and Recommendations, 21 days has passed  
 28 since the Court issued its March 22, 2023 show cause order and 62 days has passed since the Court issued  
 its February 3, 2023 screening order. Thus, Plaintiff was afforded more than sufficient time (an additional  
 11 days and 41 days, respectively) to account for delays in mailing.

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
2 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson*, 779 F.2d at  
3 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

#### 4 **B. Analysis**

5 The undersigned considers each of the above-stated factors and concludes dismissal is  
6 warranted in this case. As to the first factor, the expeditious resolution of litigation is deemed to  
7 be in the public interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983,  
8 990-91 (9th Cir. 1999). Turning to the second factor, the Court's need to efficiently manage its  
9 docket cannot be overstated. This Court has "one of the heaviest caseloads in the nation," and  
10 due to unfilled judicial vacancies, which is further exacerbated by the COVID-19 pandemic,  
11 operates under a declared judicial emergency. *See* Amended Standing Order in Light of Ongoing  
12 Judicial Emergency in the Eastern District of California. The Court's time is better spent on its  
13 other matters than needlessly consumed managing a case with a recalcitrant litigant. The Court  
14 cannot effectively manage its docket if a plaintiff ceases to litigate his case or respond to the  
15 Court's orders. Thus, the Court finds that both the first and second factors weigh in favor of  
16 dismissal.

17 Delays inevitably have the inherent risk that evidence will become stale or witnesses'  
18 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third  
19 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor, risk of prejudice  
20 to defendant, also weighs in favor of dismissal since a presumption of injury arises from the  
21 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522,  
22 524 (9th Cir. 1976). Plaintiff's inaction amounts to an unreasonable delay in prosecuting this  
23 action, weighing in favor of dismissal for a risk of prejudice to defendants.

24 Finally, the fourth factor usually weighs against dismissal because public policy favors  
25 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,  
26 "this factor lends little support to a party whose responsibility it is to move a case toward  
27 disposition on the merits but whose conduct impedes progress in that direction," which is the case  
28 here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th

1 Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on multiple failures  
 2 by aspiring litigants to follow the rules and requirements of our courts.” *Pagtalunan v. Galaza*,  
 3 291 F.3d 639, 644 (9th Cir. 2002) (Trott, J., concurring in affirmance of district court’s  
 4 involuntary dismissal with prejudice of habeas petition where petitioner failed to timely respond  
 5 to court order and noting “the weight of the docket-managing factor depends upon the size and  
 6 load of the docket, and those in the best position to know what that is are our beleaguered trial  
 7 judges.”).

8 Finally, the Court’s warning to a party that failure to obey the court’s order will result in  
 9 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;  
 10 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. Both the Court’s March 22, 2023  
 11 order to show cause and the February 3, 2023 screening order expressly warned Plaintiff that his  
 12 failure to comply with the Court’s orders would result in a recommendation for dismissal of this  
 13 action. (*See* Doc. No. 9 at 12, Doc. No. 10 at 2). Thus, Plaintiff had adequate warning that  
 14 dismissal could result from his noncompliance. And the instant dismissal is a dismissal *without*  
 15 prejudice, which is a lesser sanction than a dismissal with prejudice, thereby addressing the fifth  
 16 factor.

17 After considering the factors set forth *supra* and binding case law, the undersigned  
 18 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41 and Local Rule 110.

19 Accordingly, it is **ORDERED**:

20 The Clerk of the Court randomly assign this case to a District Judge.

21 It is further **RECOMMENDED**:

22 This action be **DISMISSED** *without prejudice* for Plaintiff’s failure to obey court orders  
 23 and failure to prosecute.

#### 24 NOTICE

25 These Findings and Recommendations will be submitted to the United States District  
 26 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**  
 27 **of the date of service** of these Findings and Recommendations, Plaintiff may file written  
 28 objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s

Findings and Recommendations.” Plaintiff’s failure to file objections within the specified time may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

Dated: April 12, 2023

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE